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Dmitry Radbel, Charles Evans IV, *et al.*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RANDALL FIRESTONE; DMITRY
RADBEL; CHARLES EVANS IV;
RAMA NADELLA AND NAGAMANI
NADELLA AS TRUSTEES OF THE
NADELLA FAMILY TRUST; KANA
VENTURES, LLC; SREE SAI SATISH
ADUSUMILLI; SAROJA VALLURU;
MITESH PATEL; REENA NAVULURI;
CVR PROPERTIES, LLC; SUBBARAO
INAMPUDI; KOTESWARI
INAMPUDI; RAKESH NAVULURI;
RAMAKRISHNA REDDY THUMATI;
DAVID WHITTEN; RAYASAM V.
PRASAD AND ANJANI R. PRASAD
AS TRUSTEES OF THE PRASAD
LIVING TRUST; SOMESWARA
NAVULURI; GAUTAM NADELLA
AND GANGA NADELLA AS
TRUSTEES OF THE NADELLA 2014
REVOCABLE TRUST; AUSTIN
MASKET; JACQUELINE (JACI)
BOBO; GABRIELLE SAYSAMONE;
BRIDGET BOTTORFF; ALAN
BEUTLER; BRYNA MCNEELY;
JAGAN VEMULAPALLI; JAY
BEYNON; MARC MAYS; LINDA
TOM; KARINA RODRIGUEZ
JIMENEZ; SAMANTHA NADELLA
AND DAVID COHEN AS TRUSTEES
OF THE NADELLA COHEN FAMILY
2020 REVOCABLE TRUST; JOHN
FREE; HATHAI BUNCHONGSILPA;
SUNG RHEE; AND MARK
SCHRAMM,

Plaintiffs,

Case No.

COMPLAINT FOR:

**(1) FRAUD—INTENTIONAL
MISREPRESENTATION;
(2) FRAUD--CONCEALMENT
(3) NEGLIGENT
MISREPRESENTATION;
(4) BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING;
(5) BREACH OF FIDUCIARY
DUTY;
(6) RESCISSION;
(7) DECLARATORY RELIEF;
(8) PRELIMINARY RELIEF
INCLUDING A TEMPORARY
RESTRAINING ORDER AND
APPOINTMENT OF A RECEIVER**

v.

RESIDENTIAL PROPERTIES
RESOURCES FUND II, LLC;
RESIDENTIAL PROPERTIES
RESOURCES OPZ FUND I, LLC;
RPRFII CV I, LLC; HIGHGROVE
HOLDINGS MANAGEMENT, LLC;
AND DOES 1 THROUGH 10,

Defendants.

Plaintiffs Randall Firestone; Dmitry Radbel; Charles Evans IV; Rama Nadella and Nagamani Nadella as trustees of the Nadella Family Trust; Kana Ventures, LLC; Sree Sai Satish Adusumilli; Saroja Valluru; Mitesh Patel; Reena Navuluri; CVR Properties, LLC; Subbarao Inampudi; Koteswari Inampudi; Rakesh Navuluri; Ramakrishna Reddy Thumati; David Whitten; Rayasam V. Prasad and Anjani R. Prasad as trustees of The Prasad Living Trust; Someswara Navuluri; Gautam Nadella and Ganga Nadella as trustees of the Nadella 2014 Revocable Trust; Austin Masket; Jacqueline (Jaci) Bobo; Gabrielle Saysamone; Bridget Bottorff; Alan Beutler; Bryna McNeely; Jagan Vemulapalli; Jay Beynon; Marc Mays; Linda Tom; Karina Rodriguez Jimenez; Samantha Nadella and David Cohen as trustees of the Nadella Cohen Family 2020 Revocable Trust; John Free; Hathai Bunchongsilpa; Sung Rhee; and Mark Schramm (collectively, "Plaintiffs") (collectively, "Plaintiffs") allege that:

1. This Complaint is filed because Defendant Highgrove Holdings Management, LLC, the manager of two investment funds formed to purchase, manage and lease residential properties, Defendants Residential Properties Resources Fund II, LLC and Residential Properties Resources OPZ Fund I, LLC, along with the two funds, have made material misrepresentations to Plaintiffs, have concealed material facts from Plaintiffs, are commingling assets of the Funds, are transferring properties out of the Funds to newly formed entities, and at least during fiscal year 2021, Plaintiffs are informed and believe, and based thereon allege, operated in a manner consistent with a Ponzi scheme, with investor funds being used to pay distributions to other investors. Meanwhile, despite repeated written requests, the Funds and

1 Highgrove have represented that the Plaintiffs' investment funds are "safe" but have
2 steadfastly refused to permit Plaintiffs (members and investors in the Funds) access to
3 inspect and copy books and records as the Funds are required to do under applicable
4 statutes and the Funds' operating agreements. Instead, Highgrove Holdings
5 Management, LLC and the two funds continue to delay any inspection to a later date
6 and request information that has already been provided to them. Meanwhile, assets
7 are being commingled between the Funds and transferred out of the Funds.

8 2. By this action, Plaintiffs seek declaratory relief, seek damages arising from
9 the Defendants' actions and conduct alleged herein, and request preliminary relief of
10 the appointment of a receiver for the Funds and related entity RPRFII CVI, LLC and
11 for a temporary restraining order and preliminary injunction in aid of the receiver.
12 Plaintiffs will separately file a motion requesting the appointment of a receiver, for a
13 temporary restraining order and preliminary injunction and an application requesting
14 that the motion be heard on an *ex parte* basis.

15 **PARTIES**

16 3. Plaintiff Randall Firestone is an individual who, at all times relevant
17 herein resided in the County of Los Angeles, State of California.

18 4. Dmitry Radbel is an individual who, at all times relevant herein resided
19 in the County of Los Angeles and the County of Riverside, State of California.

20 5. Charles Evans IV is an individual who, at all times relevant herein
21 resided in the County of Los Angeles, State of California.

22 6. Rama Nadella and Nagamani Nadella as trustees of the Nadella Family
23 Trust are individuals who, at all times relevant herein resided in the County of Los
24 Angeles, State of California.

25 7. Kana Ventures, LLC is a California limited liability company with its
26 principal place of business in Burlingame, California.

27 8. Sree Sai Satish Adusumilli is an individual who, at all times relevant
28 herein resided in the County of Los Angeles, State of California.

1 9. Saroja Valluru is an individual who, at all times relevant herein resided in
2 the County of Los Angeles, State of California.

3 10. Mitesh Patel is an individual who, at all times relevant herein resided in
4 Chicago, Illinois.

5 11. Reena Navuluri is an individual who, at all times relevant herein resided
6 in the County of Los Angeles, State of California.

7 12. CVR Properties, LLC, is an Alabama limited liability company that at all
8 times relevant herein had its principal place of business in Alabama.

9 13. Subbarao Inampudi is an individual who, at all times relevant herein
10 resided in the County of Miami-Dade, State of Florida.

11 14. Koteswari Inampudi is an individual who, at all times relevant herein
12 resided in the County of Miami-Dade, State of Florida.

13 15. Rakesh Navuluri is an individual who, at all times relevant herein resided
14 in Chicago, Illinois.

15 16. Ramakrishna Reddy Thumati is an individual who, at all times relevant
16 herein resided in the County of Los Angeles, State of California.

17 17. David Whitten is an individual who, at all times relevant herein resided
18 in Huntsville, Alabama.

19 18. Rayasam V. Prasad and Anjani R. Prasad as trustees of The Prasad
20 Living Trust are individuals who, at all times relevant herein resided in Jonesboro,
21 Georgia.

22 19. Someswara Navuluri is an individual who, at all times relevant herein
23 resided in Bloomfield Hills, Michigan.

24 20. Gautam Nadella and Ganga Nadella as trustees of the Nadella 2014
25 Revocable Trust are individuals who, at all times relevant herein resided in Menlo
26 Park, California.

27 21. Austin Masket is an individual who, at all times relevant herein resided in
28 the County of Los Angeles, State of California.

1 22. Jacqueline (Jaci) Bobo is an individual who, at all times relevant herein
2 resided in the County of Racine, State of Wisconsin.

3 23. Gabrielle Saysamone is an individual who, at all times relevant herein
4 resided in the County of Los Angeles, State of California.

5 24. Bridget Bottorff is an individual who, at all times relevant herein resided
6 in the County of Los Angeles, State of California.

7 25. Alan Beutler is an individual who, at all times relevant herein resided in
8 the County of Los Angeles, State of California.

9 26. Bryna McNeely is an individual who, at all times relevant herein resided
10 in the County of Los Angeles, State of California.

11 27. Jagan Vemulapalli is an individual who, at all times relevant herein
12 resided in the County of Los Angeles, State of California.

13 28. Jay Beynon is an individual who, at all times relevant herein resided in
14 the County of Los Angeles, State of California.

15 29. Marc Mays is an individual who, at all times relevant herein resided in
16 the County of Los Angeles, State of California.

17 30. Linda Tom is an individual who, at all times relevant herein resided in
18 the County of Los Angeles, State of California.

19 31. Karina Rodriguez Jimenez is an individual who, at all times relevant
20 herein resided in the County of Los Angeles, State of California.

21 32. Samantha Nadella and David Cohen as trustees of the Nadella Cohen
22 Family 2020 Revocable Trust are individuals who, at all times relevant herein resided
23 in the County of Los Angeles, State of California.

24 33. John Free is an individual who, at all times relevant herein resided in the
25 County of Los Angeles, State of California.

26 34. Hathai Bunchongsilpa is an individual who, at all times relevant herein
27 resided in the County of Los Angeles, State of California.
28

1 35. Sung Rhee is an individual who, at all times relevant herein resided in the
2 County of Los Angeles, State of California.

3 36. Mark Schramm is an individual who, at all times relevant herein resided
4 in the County of Los Angeles, State of California.

5 37. Defendant Residential Properties Resources Fund II, LLC is a Delaware
6 limited liability company which, at all times relevant herein, transacted business in the
7 County of Los Angeles, State of California and which has offices in Torrance,
8 California and Milwaukee, Wisconsin.

9 38. Defendant Residential Properties Resources OPZ Fund I, LLC is a
10 Delaware limited liability company which, at all times relevant herein, transacted
11 business in the County of Los Angeles, State of California and which has offices in
12 Torrance, California and Milwaukee, Wisconsin.

13 39. Defendant RPRFII CV I, LLC is a Delaware limited liability company
14 which, at all times relevant herein, transacted business in the County of Los Angeles,
15 State of California and which has offices in Torrance, California and Milwaukee,
16 Wisconsin.

17 40. Defendant Highgrove Holdings Management, LLC is a Delaware limited
18 liability company which, at all times relevant herein, transacted business in the County
19 of Los Angeles, State of California and which has offices in Torrance, California and
20 Milwaukee, Wisconsin.

21
22 **JURISDICTION AND VENUE**

23 41. This Court has subject matter jurisdiction over this action pursuant to 28
24 U.S.C. § 1332(a). Plaintiffs are individuals, trustees of trusts and limited liability
25 companies, whose residences and principal places of businesses were, at all times
26 relevant, in Los Angeles County, Riverside County, Burlingame, Carlsbad and Menlo
27 Park, California; Las Vegas, Nevada; Jonesboro Georgia; Bloomfield Hills, Michigan;
28 New York, New York; Coral Gables and Miami-Dade County, Florida; Huntsville,

1 Alabama; Mount Pleasant, Wisconsin, Chicago, Illinois; and Racine County,
 2 Wisconsin. Defendants are Delaware limited liability companies with offices in
 3 Milwaukee, Wisconsin and Torrance, California. The amount in controversy exceeds
 4 \$75,000 exclusive of interest and costs.

5 42. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a
 6 substantial part of the conduct and acts alleged herein, including fraud (through
 7 intentional misrepresentations and concealment), and breaches of fiduciary duty and
 8 the implied covenant of good faith and fair dealing, occurred in, and resulted in
 9 damages, within this judicial district. In addition, Section 13.5(c) of the limited
 10 liability company agreements and Section 8(b)(ii) of the subscription agreements
 11 entered into between Plaintiffs and Defendants state that the United States District
 12 Court for the Central District of California or the Los Angeles County Superior Court
 13 are the courts with exclusive jurisdiction to determine disputes, claims or
 14 controversies to the extent that arbitration provisions do not apply.

15 **GENERAL ALLEGATIONS**

16 43. Plaintiffs are members and investors in two limited liability companies that
 17 were formed to raise investor money to purchase and then manage and lease
 18 residential real properties, Residential Properties Resources Fund II, LLC (“RPRFII”)
 19 and Residential Properties Resources OPZ Fund I, LLC (“OPZ”) (RPRFII and OPZ
 20 are collectively referred to as the “Funds”).

21 44. This Complaint is filed because of the urgent need for relief, including
 22 preliminary relief including the appointment of a receiver over the Funds and related
 23 entity RPRFII CVI, LLC (“CVI”) and a temporary restraining order and preliminary
 24 injunction in aid of the receiver given that the Funds’ manager, Highgrove Holdings
 25 Management, LLC (“Highgrove”), is commingling assets of the Funds, including the
 26 transfer of properties between the Funds. Highgrove is also transferring properties out
 27 of the Funds to newly formed entities as recently as October and November 2022,
 28 placing the properties at risk of further transfers and/or encumbrances. Plaintiffs are

1 informed and believe, and based thereon allege, that the Funds lack appropriate
2 safeguards and controls in order to prevent Highgrove from commingling assets
3 between the Funds and transferring properties out of the Funds. In addition, Plaintiffs
4 are informed and believe, and based thereon allege, that the Funds' unaudited
5 financial statements for fiscal year 2021 evidence that the Funds operated in a manner
6 consistent with a Ponzi scheme at least during 2021. All of this is taking place while
7 the Funds and Highgrove have refused to permit Plaintiffs (members and investors in
8 the Funds) access to inspect and copy books and records as the Funds are required to
9 do under applicable statutes and the Funds' operating agreements. Instead, the Funds
10 and Highgrove keep stating different reasons why any inspection of books and records
11 needs to be delayed or keep asking for additional information prior to an inspection
12 taking place when the information has already been provided.

13 45. The Funds and Highgrove have repeatedly represented to Plaintiffs that
14 their investments are "safe," that "the fund is safe," that "the fund is not in trouble,"
15 that "your investment is well capitalized and secure" and that "[w]e're not going to be
16 losing anybody's dollars or anything like that. Your investment is well capitalized
17 and well secured." However, the Funds have been unwilling to provide access to the
18 Funds' financial records, other than a limited subset of documents hand-selected by
19 the Funds.

20 46. Plaintiffs are informed and believe, and based thereon allege, that as to the
21 serious issue of the Funds operating in a manner consistent with a Ponzi scheme, the
22 Funds' unaudited financial statements (compilations) for 2021 that were just recently
23 sent to members and investors at the end of September 2022 evidence that the Funds'
24 distributions to members were well beyond the operating profits or liquid assets of the
25 Funds (other than new investments) and that the Funds' distributions to
26 members/investors during at least 2021 must have come from new investments
27 because there was no other source for the funds. Further, although the Funds have
28 frozen distributions to members/investors as of in or about April 2022, the Funds'

1 monthly snapshots sent to members/investors for October 2022 state that “[w]ith no
 2 commitment of the amount, cash distributions are anticipated to restart during the first
 3 quarter, to be received at the end of April 2023.” True and correct copies of the
 4 October 2022 monthly snapshots are attached hereto as **Exhibits 1 and 2**.

5 47. Although the investments in the Funds were in exchange for membership
 6 interests, the Funds were represented to members/investors as investment funds where
 7 monies invested would be invested by the Funds in residential properties in
 8 Milwaukee, Wisconsin obtained at below-market values and then the properties would
 9 be rehabbed and rented out, where the members/investors would receive quarterly
 10 distributions equating to a return on investment in excess of 16%. The
 11 members/investors in the Funds received quarterly statements that showed columns
 12 for the original investments/contribution, our account value as of that quarter,
 13 reinvestment account value (for distributions owed that were reinvested in the Funds
 14 rather than paid out) and our total portfolio value of investments. The quarterly
 15 statements also showed distributions, capital to be returned and return on investment
 16 (“ROI”). However, Plaintiffs are informed and believe, and based thereon allege, that
 17 the Funds stopped sending quarterly statements after in or about the third quarter of
 18 2021.

19 48. According to representations made by Highgrove during a RPRFII investor
 20 Zoom call on May 4, 2022, at that point RPRFII had \$16.86 million in investor funds
 21 and OPZ had \$9.143 in investor funds invested or membership interests at that point.
 22 Of that amount, Plaintiffs have collectively invested over \$7.5 million for membership
 23 interests in the Funds as follows:

Plaintiff Name	Name of Fund for the Membership Interest/Investment	Investment Amount(s) and Date(s) of Purchase of Membership Interest/Investment
Randall Firestone	RPRFII	\$200,000 (2/21)

		\$100,000 (2/21)
		\$200,000 (8/19)
Dmitry Radbel	RPRFII	\$80,000 (6/24/21)
		\$40,000 (9/24/19)
		\$40,000 (7/31/19)
Charles Evans	RPRFII	\$100,000 (6/23/22)
		\$400,000 (7/8/20)
		\$100,000 (3/13/20)
Rama Nadella and Nagamani Nadella as trustees of the Nadella Family Trust	RPRFII	\$1,100,000 (between 4/8/18 – 6/29/20)
Kana Ventures, LLC	RPRFII	\$105,000 (7/21)
		\$75,000 (10/20)
		\$20,000 (5/20)
Sree Sai Satish Adusumilli and Saroja Valluru	OPZ	\$20,000 (4/1/22)
Mitesh Patel and Reena Navuluri	RPRFII	\$50,000 (1/22)
CVR Properties, LLC	RPRFII	\$100,000 (1/7/22)
Subbarao Inampudi and Koteswari Inampudi	RPRFII	\$100,000 (12/21)
Rakesh Navuluri	RPRFII	\$100,000 (1/24/22)
Ramakrishna Reddy Thumati	RPRFII	\$100,000 (12/31/21)
David Whitten	RPRFII	\$100,000 (12/31/21)

1	Rayasam V. Prasad and	RPRFII	\$200,000 (12/29/21)
2	Anjani R. Prasad as		
3	trustees of The Prasad		
4	Living Trust		
5	Someswara Navuluri	RPRFII	\$100,000 (1/20/22)
6	Gautam Nadella and	RPRFII	\$500,000 (12/20)
7	Ganga Nadella as trustees		
8	of the Nadella 2014		
9	Revocable Trust		
10	Austin Masket	RPRFII	\$120,000 (6/28/21) (RPRFII)
11			
12		OPZ	\$250,000 (6/28/21) (OPZ)
13	Jacqueline (Jaci) Bobo	RPRFII	\$40,000 (8/6/19)
14	Gabrielle Saysamone	RPRFII	\$60,000 (11/20)
15			\$60,000 (11/18)
16	Bridget Bottorff	RPRFII	\$20,000 (8/6/19)
17	Alan Beutler and Bryna	OPZ	\$250,000 (6/14/21)
18	McNeely		
19	Jagan Vemulapalli	RPRFII	\$100,000 (12/30/21)
20	Jay Beynon	RPRFII	\$200,000 (12/15/20)
21			\$50,000 (3/27/20)
22			\$50,000 (12/21/18)
23			
24	Marc Mays	OPZ	\$200,000 (8/30/21)
25	Linda Tom	RPRFII	\$100,000 (6/8/21)
26			
27		OPZ	\$200,000 (8/30/21)
28			\$12,000 (3/3/21)

		\$50,000 (11/23/20)
Karina Rodriguez Jimenez	RPRFII	\$80,000 (6/29/21)
Samantha Nadella and David Cohen as trustees of the Nadella Cohen Family 2020 Revocable Trust	RPRFII	\$50,000 (1/10/21)
John Free	RPRFII	\$25,000 (12/28/21) \$50,000 (12/17/21)
Hathai Bunchongsilpa	RPRFII	\$20,000 (1/5/22) \$200,000 (1/26/21) \$200,000 (11/24/20) \$101,000 (11/30/19) \$50,000 (11/2/19) \$50,000 (11/14/18)
Sung Rhee	RPRFII OPZ	\$150,000 (10/21/21) (RPRFII) \$100,000 (6/21/21) (OPZ)
Mark Schramm	OPZ RPRFII	\$250,000 (10/29/21) \$300,000 (12/22/20) \$100,000 (9/16/19) \$30,000 (2/20/19) \$30,000 (12/28/18)

49. The Funds own numerous residential properties in Milwaukee, Wisconsin, but the properties have high vacancy rates. According to the November 2022 monthly snapshot reports sent by Highgrove (the manager of the Funds) to Plaintiffs and other members/investors, RPRFII owns 207 properties with 347 total

1 units (the properties include duplexes and multi-unit residences) and OPZ owns 80
 2 properties with 130 total units. The vacancy rates of RPRII and OPZ properties are
 3 extremely high at 49.4% and 36%, respectively, as of November 2022 according to
 4 the monthly snapshots. During an investor Zoom call on December 21, 2022, a slide
 5 again represents that RPRFII owns 207 properties with 347 units. The slide also
 6 represents that RPRFII units have a 49.28% vacancy rate. A true and correct copy of
 7 the slide is attached as **Exhibit 3**. Highgrove’s website as of December 2022 states
 8 that “Highgrove has been acquiring properties in the Milwaukee area at prices, in
 9 some cases, exceeding 50% off of fair market value. Properties purchased according
 10 to our strategy provide tremendous a [sic] cash flow with 10% - 18% distributions
 11 annually. Values are increasing year over year as Highgrove focuses on improving
 12 communities where purchases are made.”

13 **Background of RPRFII**

14 50. RPRFII was formed as a Delaware limited liability company on July 20,
 15 2017. On November 6, 2019, RPRFII filed its Application to Register a Foreign
 16 Limited Liability Company (LLC) with the California Secretary of State. The
 17 business address listed for RPRFII was 2501 W. 237th Street, Suite E, Torrance,
 18 California 90505 (the “Torrance Location”). Section 1.4 of the RPPRII Amended and
 19 Restated Limited Liability Company Agreement states that RPRFII’s principal place
 20 of business shall be at the Torrance Location. A true and correct copy of the operating
 21 agreement is attached hereto as **Exhibit 4**. RPRFII’s Statement of Information filed
 22 with the California Secretary of State on November 22, 2021 also lists the Torrance
 23 Location as the business address. However, RPRFII filed a LLC Termination—
 24 Certificate of Cancellation with the California Secretary of State on December 30,
 25 2021. Notwithstanding the cancellation, RPRFII still operates out of the Torrance
 26 Location in addition to its headquarters office in Milwaukee, Wisconsin.

27 51. RPRFII’s 2021 compilation states that RPRFII “was formed for the
 28 purpose of purchasing, developing and operating residential real estate in the United

1 States of America, with a focus in Milwaukee, Wisconsin. The Company is
2 controlled by Highgrove Holdings Management, LLC ('Highgrove')." Highgrove and
3 RPRFII represented that RPRFII is "a cash no debt investment fund with a line of
4 credit for purchases and rehabilitation/construction. It has a projected 16.78% annual
5 return of capital and a total projected return of 21.51% annualized over 3 years." As
6 of the second quarter of 2020, RPRFII had 58 investor members.

7 52. According to an executive summary circulated by RPRFII, "[i]nvestors
8 buy into RPRF II with cash or Highgrove can accommodate funds from 401K
9 accounts and self-directed IRAs. Highgrove also accepts 1031 exchanges. After the
10 3-year term, Investors may choose to take all their investment out of the fund; take
11 part of it out (leaving a minimum of \$20,000 in the program); or extend the term for
12 their entire investment for an additional 3 years."

13 53. In addition to the Plaintiffs and other investors purchasing membership
14 interests in the Funds, the Funds also marketed an investor/member lending program
15 where "[l]enders are investor Members of either RPRF II or the RPROZ Debt Fund,"
16 "[l]oans are secured by first trust deeds on either of the funds' properties, that are
17 already owned and being rehabbed or are in escrow to be purchased" with an
18 "[i]nterest rate [at] 12% percent annually, payable monthly at 1%" and "[i]nvestor
19 Members can choose from a 6-month or one-year term of loan." Some of the
20 Plaintiffs loaned amounts to the Funds as part of the investor/member lending
21 program in addition to their investments in the Funds wherein they obtained
22 membership interests.

23 **BACKGROUND OF OPZ**

24 54. OPZ was formed as a Delaware limited liability company on December 2,
25 2019. On December 12, 2019, OPZ filed its Application to Register a Foreign
26 Limited Liability Company (LLC) with the California Secretary of State. OPZ's
27 Statement of Information filed with the California Secretary of State on October 20,
28 2020 lists the Torrance Location as the business address. OPZ filed a LLC

1 Termination—Certificate of Cancellation with the California Secretary of State on
2 December 30, 2021. Notwithstanding the cancellation, OPZ still has an office at the
3 Torrance Location in addition to its headquarters office in Milwaukee, Wisconsin.

4 55. OPZ’s 2021 compilation states that OPZ “was formed for the purpose of
5 purchasing, developing and operating residential real estate in the United States of
6 America. The Company invests in real estate that qualifies as ‘Opportunity Zone
7 Property’ (as defined by the Internal Revenue Services code). The Company is
8 controlled by Highgrove Holdings Management, LLC (‘Highgrove’).” A true and
9 correct copy of the OPZ compilation is attached hereto as **Exhibit 5**. Highgrove and
10 OPZ represented that OPZ offered “a similar return with the additional benefit of
11 deferred capital gains—and potentially no capital gains on investment capital after 10
12 years, which greatly increases the after-tax Return of Investment. These funds are
13 focused on economically distressed communities that are designed to spur economic
14 development.”

15 56. Highgrove’s website states as of December 2022 that “[t]ax reform
16 legislation known as the Tax Cuts and Jobs Act provides a significant opportunity for
17 investors to defer capital gains owed. The benefits are for those capital gains that are
18 reinvested within 180 days of a capital gain event. Highgrove offers two types of
19 Opportunity Zone Funds. One is a no-debt fund and the other is a fund with 50%
20 debt, each with specific advantages to fit an investor’s needs. Qualified Opportunity
21 Zones (QOZ’s) allow investors to defer tax on capital gains by investing in Qualified
22 Opportunity Funds (QOF’s), which in turn make investments in QOZ real estate.”

23 **BACKGROUND OF RPRFII CV I, LLC**

24 57. CVI is an entity that, according to the 2021 RPRFII compilation, is owned
25 by the Funds, and which, although it is a separate limited liability company, operates
26 through RPRFII.

27 58. CVI was formed as a Delaware limited liability company on May 25, 2021.
28 RPRFII’s 2021 compilation represents that RPRFII purchased a controlling share of

1 CVI in 2021 and now owns 99% of CVI:

2 During the year ended December 31, 2021, the Company acquired a 99%
3 ownership interest in RPRFII CV I, LLC (“CV I”) for consideration totaling
4 \$740,000. CV I is controlled by Highgrove; however, the Company is
5 considered to have significant influence over the operations and financing
6 decisions of CV I...

7 A true and correct copy of the compilation is attached hereto as **Exhibit 6**.

8 59. RPRFII’s compilation further represents that CVI’s funds run through
9 RPRFII. As stated in the RPRFII’s 2021 compilation:

10 The Company maintains the cash transactions on behalf of CV I, an entity
11 related to the Company through common control. All of CV I’s rental income
12 and expenses are received/paid in/out of the Company’s bank account with the
13 corresponding recognition of a due to/from CV I...

14 60. Plaintiffs are informed and believe, and based thereon allege, that CVI
15 was formed by Highgrove in order to hold certain assets of the Funds and obtain a
16 loan for the Funds using properties owned by the Funds as collateral. Corevest
17 American Finance Lender LLC filed a UCC-1 financing statement as to CVI’s assets
18 on July 19, 2021. A true and correct copy of the financing statement is attached
19 hereto as **Exhibit 7**. The financing statement states that the collateral is “[a]ll assets
20 and personal property of Debtor, whether now owned or hereafter acquired, and all
21 products and proceeds thereof and additions and accessions thereto.”

22 61. Plaintiffs are informed and believe, and based thereon allege, that CVI’s
23 loan or line of credit is a loan that is commingled between the two Funds with
24 commingled assets of both Funds securing the loan.

25 **Ownership and Management of the Funds**

26 62. The manager of the Funds is Highgrove. According to the Funds’ 2021
27 compilations, each of the Funds is “controlled” by Highgrove. Highgrove filed its
28 Certificate of Formation with the Delaware Secretary of State on May 9, 2013.
Highgrove filed its Amended and Restated Certificate of Formation on September 13,
2013.

63. David Tomblin (“Tomblin”) has alternately referred to himself as the Chief Executive Officer of and the Chair of the Investments Committee of Highgrove. Highgrove’s management team also includes other members of the Tomblin family, including Ann Tomblin (David Tomblin’s wife) as Vice President of Operations and Albert (Trey) Barton, III (David Tomblin’s son-in-law) as Vice President of Technology and Research Development. Plaintiffs are informed and believe, and based thereon allege, that Tomblin controls Highgrove and, indirectly through Highgrove, controls the Funds, and that all major decisions of Highgrove and the Funds are made by Tomblin.

The Funds and Highgrove Have Not Complied with Applicable Statutes or with the Funds’ Operating Agreements Regarding the Members’ Ability to Inspect and Copy Financial Records of the Funds

64. The Funds are Delaware limited liability companies. Delaware Limited Liability Company Act § 18-305 provides for the right of members to obtain access to inspect and copy books and records:

(a) Each member of a limited liability company, in person or by attorney or other agent, has the right, subject to such reasonable standards (including standards governing what information (including books, records and other documents) is to be furnished at what time and location and at whose expense) as may be set forth in a limited liability company agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member’s interest as a member of the limited liability company:

- (1) True and full information regarding the status of the business and financial condition of the limited liability company;
- (2) Promptly after becoming available, a copy of the limited liability company’s federal, state and local income tax returns for each year;
- (3) A current list of the name and last known business, residence or mailing address of each member and manager;
- (4) A copy of any written limited liability company agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the

1 limited liability company agreement and any certificate and all
2 amendments thereto have been executed;

3 (5) True and full information regarding the amount of cash and a
4 description and statement of the agreed value of any other property or
5 services contributed by each member and which each member has agreed
6 to contribute in the future, and the date on which each became a member;
7 and

8 (6) Other information regarding the affairs of the limited liability
9 company as is just and reasonable.

10 The Funds were also registered with the California Secretary of State as foreign
11 limited liability companies during the time period that the Plaintiffs made and held
12 investments up until December 2021, when the Funds abruptly filed LLC
13 Terminations—Certificates of Cancellation with the California Secretary of State
14 without Plaintiffs’ approval and while Plaintiffs were still members and investors in
15 the Funds. Notwithstanding the alleged LLC termination, the Funds and Highgrove
16 still conduct business at the Torrance Location (they also have an office in
17 Milwaukee, Wisconsin that the Funds state is their headquarters office) and the
18 Plaintiffs are informed and believe, and based thereon allege, that the cancellations
19 filed in California related to the Funds seeking more favorable tax or other treatment
20 by designating Wisconsin as its headquarters. The Funds have had repeated and
21 successive transactions of business in California and therefore transacted intrastate
22 business in California. *See* California Corporations Code § 17708.03(a). Even though
23 the Funds are Delaware limited liability companies, since Plaintiffs represent over
24 25% of the voting interests of the Funds, they are “entitled to all information and
25 inspection rights provided in Section 17704.10.” California Corporations Code §
26 17708.08; *see also* § 17713.04. Thus, Plaintiffs’ inspection rights are provided for
27 under Delaware law and are further set forth in the California Corporations Code,
28 including California Corporations Code § 17704.10(a) and (b) and 17701.13(d).

65. In addition to Plaintiffs’ rights under Delaware Limited Liability
Company Act § 18-305 and the California Corporations Code, Section 8.1(b) of the

1 Funds' operating agreements further provide for rights to inspect and copy the Funds'
2 books and records on five business days' written notice:

3 Pursuant to Section 18-305(g) of the Act, the Members shall only have such
4 access to the books and records of the Company and the Series as expressly
5 provided in this Agreement. Subject to confidentiality and other restrictions
6 established by the Manager (including those restrictions set forth in Section 18-
7 305(c) of the Act), each Member (other than a Defaulting Member) and its duly
8 authorized agents or representatives shall be afforded access to such books and
9 records of each Series in which it is a Series Participant (and the books and
10 records of the Company only to the extent they pertain to a Series in which such
11 Member is a Series Participant) for inspection and copying (at the Series'
12 expense) at any reasonable time during regular business hours of the Company
13 upon five (5) Business Days' written notice to the Manager, if (i) the Member
14 seeks the information for any purpose reasonably related to such Member's
Interest, and (ii) the Member describes with particularity in such notice the
information sought and the purpose for seeking the information. For the
avoidance of doubt, a Member shall have no right to inspect or copy any books
or records of, or pertaining to, a Series in which such Member is not a Series
Participant.

15 True and correct copies of the Funds' operating agreements are attached hereto as
16 **Exhibits 4 and 8.**

17 66. As set forth hereinbelow, Plaintiffs have sent several written requests to
18 Highgrove and the Funds to inspect and copy books and records and have set forth the
19 documents requested to be reviewed and the purposes of the inspection, but, as set
20 forth below, Highgrove and the Funds have not permitted Plaintiffs to do so in
21 violation of the applicable statutes and the Funds' operating agreements.

22 67. On July 18, 2022, one of the Plaintiffs, Randall Firestone ("Firestone"),
23 sent an e-mail to Highgrove making a request to inspect and copy the Funds' books
24 and records. Highgrove responded on July 19, 2022, stating that it would provide the
25 2019 compilation, that the 2021 compilation would be distributed in September 2022,
26 and that it did not agree to provide any other documents. Firestone responded that he
27 already had the 2019 compilation, that it was several years old, and again requested to
28 inspect and copy the Funds' books and records. Highgrove responded that the 2021

1 compilation was in process and that they were “consumed” with the conversion of the
2 accounting system and would provide year-to-date financial statements by October 31,
3 2022. Highgrove further stated that “[a]fter those dates we will glad [sic] to work
4 with you to have you come into the office and look through any of the other items you
5 requested. We can set a date in November to do this.” True and correct copies of the
6 e-mail communications are attached hereto as **Exhibit 9**. Highgrove did not set a date
7 in November 2022 for Firestone to inspect and copy the books and records and did not
8 permit access.

9 68. Following the Funds not providing access to the books and records, on
10 August 17, 2022 certain of the Plaintiffs sent a written request to the Funds requesting
11 access to inspect and copy specified categories of documents that comprise the Funds’
12 financial records. A true and correct copy of the e-mail and attached letter are
13 attached hereto as **Exhibit 10**. The Funds only provided a limited set of hand-selected
14 documents and did not provide access to inspect or copy the remaining requested
15 documents.

16 69. During a RPRFII investor Zoom call on August 2, 2022, Tomblin (the
17 Chief Executive Officer and/or person in control of Highgrove) stated that the Funds
18 were delaying any inspection, claiming among other things that inspections of books
19 and records would “jeopardize the well-being” of the Funds:

20
21 We have two requests. Anybody who would like to come into the office
22 after the first week of November and inspect any books and records you’re
23 welcome to come in. That will not though happen until the first of
24 November. We cannot jeopardize the well-being of the Fund for all the
25 investors to have staff time right now to provide access. Right now we’re
26 paying overtime. Its affecting some of the health of Connie. And you can
27 come in all you want the first week of November and see whatever you
28 want to your heart’s content but until then we’re not going to do it.

27 70. After months of delay, the Funds did not provide access to inspect and
28 copy the books and records during November 2022. Instead, on November 21, 2022,

1 Plaintiffs sent a further written request for access to inspect and copy specified
2 categories of documents that comprise the Funds' financial records. As stated in the
3 request:

4
5 The purpose of the requested inspection and copying of books and records
6 is to, among other things: (1) assess the status of the business and financial
7 condition of the Funds, including but not limited to the assets, liabilities,
8 income and expenses; (2) obtain transparency as to the transactions,
9 purchases, sales and transfers entered into by the Funds; (3) assess the
10 status and safety of the Clients' interests and investments in the Funds; (4)
11 determine the accuracy of representations made by officers, directors,
12 managers, members, agents, employees and authorized representatives of
13 the Funds to the Clients; and (5) determine whether any further actions are
14 appropriate.

12 True and correct copies of the e-mail and attached letter along with proofs of delivery
13 of the letter via overnight delivery and certified mail are attached hereto as

14 **Exhibit 11.**

15 71. The Funds sent a response to the letter on November 23, 2022 via e-mail.
16 True and correct copies of the e-mail and attached response letter are attached hereto
17 as **Exhibit 12**. The response letter did not agree to provide access to inspect and copy
18 the books and records and instead stated that new letters had to be sent containing
19 information already provided in the Plaintiffs' letter of November 21, 2022.

20 72. Plaintiffs sent a response to the letter on November 28, 2022 (the next
21 business day following the Thanksgiving holiday). True and correct copies of the e-
22 mail and attached letter along with proofs of delivery of the letter via overnight
23 delivery and certified mail are attached hereto as **Exhibit 13**.

24 73. The Funds sent a response the same day, on November 28, 2022, which
25 again failed to provide access to inspect and copy the books and records and instead
26 requested the same information referenced in the Funds' November 28, 2022 letter,
27 which information was previously provided in the letter of November 21, 2022. True
28

1 and correct copies of the e-mail and attached response letter are attached hereto as
2 **Exhibit 14.**

3 74. The Plaintiffs sent a response on November 29, 2022 noting that all of
4 the information requested by the Funds was contained in the Plaintiffs' prior letter.
5 True and correct copies of the e-mail and attached letter along with proofs of delivery
6 of the letter via overnight delivery and certified mail are attached hereto as
7 **Exhibit 15.**

8 75. On December 2, 2022, the Funds and Highgrove responded that "I
9 wanted to acknowledge you [sic] last set of letters and will respond on Monday when
10 back at the office where the letters are at." True and correct copies of the e-mail and
11 attached response letter are attached hereto as **Exhibit 16.** Plaintiffs did not receive
12 any further response and the Funds and Highgrove have failed to provide access to
13 inspect and copy the books and records.

14 76. As to one of the limited hand-selected documents that have been
15 provided by the Funds and Highgrove to Plaintiffs, RPRFII's 2019 compilation is
16 several years old and states that it cannot be relied upon:

17
18 We have performed a compilation engagement in accordance with Statements
19 on Standards for Accounting and Review Services promulgated by the
20 Accounting and Review Services Committee of the AICPA. We did not audit
21 or review the financial statements nor were we required to perform any
22 procedures to verify the accuracy or completeness of the information provided
23 by management. Accordingly, we do not express an opinion, a conclusion, nor
24 provide any assurance on these financial statements. Management has elected
25 to omit substantially all of the disclosures required by accounting principles
26 generally accepted in the United States of America. If the omitted disclosures
27 were included in the financial statements they might influence the user's
28 conclusions about the Company's financial position, results of operations, and
cash flows. Accordingly, the financial statements are not designed for those
who are not informed about such matters.

27 A true and correct copy of the RPRFII 2019 compilation is attached hereto as
28 **Exhibit 17.**

1 77. The Funds' 2021 compilations that were just recently provided in or about
2 the end of September 2022 contain disclosures that they are only compilations and
3 that "[w]e did not audit or review the financial statements, nor were we required to
4 perform any procedures to verify the accuracy or the completeness of the information
5 provided by management. We do not express an opinion, a conclusion, nor provide
6 any form of assurance on these financial statements." True and correct copies of the
7 Funds' 2021 compilations are attached hereto as **Exhibit 5** and **6**.

8 78. RPRFII and OPZ's financial statements for 2021 and 2019 are
9 compilations (The Funds did not provide a compilation for 2020 and only later
10 provided certain internal unaudited financial statements for 2020). Unlike audited
11 financial statements, compilations do not provide any assurance as to the accuracy
12 and completeness of a company's financial statements. For compilations, all
13 information contained is based on management representations and the accountants
14 do not take any steps to verify the information provided by management.

15 79. The 2019 and 2021 compilations provided by the Funds to Plaintiffs
16 therefore do not provide any assurance as to the financial status of the Funds,
17 transparency as to transactions, purchases, sales and transfers, the status and safety of
18 Plaintiffs' investments in the Funds, or the accuracy of representations made by
19 Highgrove and the Funds to Plaintiffs. The compilations are solely based on
20 representations made by Highgrove and the Funds to the accountants that prepared
21 the compilations with limited and incomplete information.

22 80. The Funds, and Highgrove as manager of the Funds, have failed to comply
23 with applicable Delaware and California statutes and with the Funds' operating
24 agreements regarding the right of members/investors to inspect and copy the Funds'
25 books and records and instead have repeatedly sought to delay any inspection rights.

26 **The Funds Keep Representing That the Plaintiffs' Investments Are "Safe"**
27 **While Refusing to Provide Access to Financial Books and Records**

28 81. The Funds have repeatedly made representations to Plaintiffs and other

1 members/investors in the Funds that their investments are “safe.” During a RPRFII
2 investor Zoom call on May 4, 2022, the first slide stated that “[t]he fund is safe & we
3 will be addressing challenges.” During that call, Tomblin stated that “first of all the
4 fund is safe” and “the fund is not in trouble.” Then during a RPRFII investor Zoom
5 call on June 28, 2022, one of the slides presented stated “[y]our investment is well
6 capitalized and secure.” During that investor Zoom call Tomblin stated that “I want to
7 reassure everyone that your investment is well capitalized and secure. Well
8 capitalized and secure. And so we’re not going to be losing property. We’re not
9 going to be losing anybody’s dollars or anything like that. Your investment is well
10 capitalized and well secured.”

11 82. While representing that the Plaintiffs and other members’ investments are
12 safe, beginning in July 2022, Highgrove and the Funds stated that they would not
13 provide the members with access to inspect the Funds’ financial books and records
14 until November 2022. However, despite repeated requests, access was not provided.
15 The Funds have repeatedly delayed access to the books and records, as of the filing of
16 this Complaint, Defendants have continued to decline requests to provide access to the
17 Funds’ books and records.

18 83. In addition to not complying with requests to inspect and copy books and
19 records, Plaintiffs are informed and believe, and based thereon allege, that the Funds
20 have also not sent quarterly statements to members/investors since after the third
21 quarter of 2021. Plaintiffs have not received quarterly account statements for the
22 fourth quarter of 2021 or the first, second or third quarter of 2022.

23 **During October and November 2022, While Denying Access to**
24 **Plaintiffs to Inspect and Copy Books and Records, Highgrove or Its**
25 **Principals Formed Two New LLCs and Then Transferred 17**
26 **Properties Out of the Funds to the New Entities**

27 84. On October 3, 2022, Wisconsin corporate records reflect that Highgrove or
28 its principals formed two new entities, RPRFII F, LLC and RPROPZFI F, LLC, as

1 limited liability companies. True and correct copies of the articles of organization for
2 RPRFII F, LLC and RPROPZFI F, LLC are attached hereto as **Exhibits 18** and **19**.

3 85. As shown in the chart below, just four days after forming the two new
4 entities, the Funds transferred thirteen properties to the new entities. True and correct
5 copies of the quitclaim deeds and warranty deeds are attached hereto as **Exhibits 20**
6 and **21**. These transfers were not disclosed to Plaintiffs and Plaintiffs instead learned
7 of the transfers from a search of public records. To the contrary, the Funds concealed
8 the transfers of the properties in the Funds' October and November 2022 monthly
9 snapshots, which list the exact same number of properties and units held in October
10 and November 2022 as the Funds held in September 2022. Based on the transfer of
11 properties, the monthly snapshots were false, misleading and concealed material
12 information.

13 86. The Funds then also transferred an additional four properties to the new
14 entities during November 2022. True and correct copies of the quitclaim deeds and
15 warranty deeds are attached hereto as **Exhibit 22**. These transfers were not disclosed
16 to Plaintiffs and Plaintiffs instead learned of the transfers from a search of public
17 records. To the contrary, the Funds concealed the transfers of the properties in the
18 October and November 2022 monthly snapshots, which list the exact same number of
19 properties and units held in those months as the Funds held in September 2022. Based
20 on the transfer of properties, the monthly snapshots were false, misleading, and
21 concealed material information.

22 87. Although the sale and transfer documents list sale prices, there is no
23 evidence that the new entities formed by Highgrove or its principals have assets other
24 than the transferred properties they received from the Funds or that the new entities
25 paid any amounts to the Funds in exchange for the transferred properties. To the
26 extent that the new entities paid any amounts to the Funds in exchange for the
27 properties, there is no evidence that the amounts represent fair market value.
28 Although Highgrove and the Funds have declined to provide access to Plaintiffs to

inspect and copy the Funds' books and records and concealed the transfer of properties, it appears that the properties were sold and transferred for far less than fair market value or potentially for no value to the newly formed entities. The transfers of properties during October and November 2022 are as follows:

Property Transferred By/To	Address of Transferred Property	Date of Transfer
RPRFII / RPRFII F, LLC	3166 N. Palmer St., Milwaukee, Wisconsin	10/19/22
RPRFII / RPRFII F, LLC	2225 N. 40 th St., Milwaukee, Wisconsin	10/19/22
CVI / RPRFII F, LLC	3019 W. Oriole Dr., Milwaukee, Wisconsin	10/19/22
CVI / RPRFII F, LLC	5027 N. 58 th St., Milwaukee, Wisconsin	10/19/22
CVI / RPRFII F, LLC	5131 N. 60 th St., Milwaukee, Wisconsin	10/19/22
CVI / RPRFII F, LLC	4555 N. 37 th St., Milwaukee, Wisconsin	10/19/22
OPZ / RPROPZFI F, LLC	3272-3274 N. Buffum St., Milwaukee, Wisconsin	10/19/22
OPZ / OPZ RPROPZFI F, LLC	1140 N. 26 th St., Milwaukee, Wisconsin	10/19/22
CVI / RPROPZFI F, LLC	3240 N. 29 th St., Milwaukee, Wisconsin	10/19/22
CVI / RPROPZFI F, LLC	4978 N. 37 th St., Milwaukee, Wisconsin	10/19/22
CVI / RPROPZFI F, LLC	3703 N. 24 th St., Milwaukee, Wisconsin	10/19/22
CVI / RPROPZFI F, LLC	3877 N. 26 th St., Milwaukee, Wisconsin	10/19/22
CVI / RPROPZFI F, LLC	4221 N. 42 nd Pl., Milwaukee, Wisconsin	10/19/22
RPRFII / RPRFII F, LLC	2770 N. 18 th St., Milwaukee, Wisconsin	11/28/22
RPRFII / RPRFII F, LLC	2611 N. 19 th St., Milwaukee, Wisconsin	11/28/22
RPRFII / RPRFII F, LLC	1631-1663 N. 36 th St., Milwaukee, Wisconsin	11/28/22
RPRFII / RPRFII F, LLC	3062-3064 N. 24 th Pl.,	11/28/22

	Milwaukee, Wisconsin	
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1
2
3 88. Notwithstanding the Funds' transfer of properties to the newly formed
4 limited liability companies during October and November 2022, the Funds' monthly
5 snapshots (summaries) for both October and November 2022 falsely state that the
6 Funds had the exact same number of properties in October and November 2022 as
7 they did in September 2022. True and correct copies of the RPRFII October and
8 November monthly snapshots are attached hereto as **Exhibits 1** and **23**. True and
9 correct copies of the OPZ October and November monthly snapshots are attached
10 hereto as **Exhibits 2** and **24**.

11 89. The Funds' October and November 2022 monthly snapshots are a material
12 misrepresentation or fraud through concealment by Highgrove and the Funds and
13 obfuscate and conceal the Funds' transfer of properties out of the Funds during
14 October and November 2022. Highgrove's formation of new entities, then
15 transferring Highgrove properties to the new entities days later while refusing
16 disclosure to the Funds' members regarding the property transfers raises significant
17 issues of concern in regard to further dissipation of the Funds' assets and transfers or
18 encumbrances of the properties.

19 90. In addition, the newly formed entities' formation documents, which
20 documents were not provided by Highgrove or the Funds, and instead were located
21 through a search of public records, do not show that the Funds have any direct
22 ownership interest in the new entities. In addition, public records do not show that the
23 Funds have any security interest against the properties that were transferred. The lack
24 of direct ownership interests or security interests in the transferred properties creates
25 significant risk to the Funds related to the properties. To the extent that the properties
26 were transferred to the new entities to serve as collateral for financing for the Funds,
27 given that Highgrove has stated it is attempting to obtain financing using properties as
28 collateral, transferring properties to newly formed entities and with no protections as

1 results in the same significant risk and misuse of assets to the Funds. Further, the
 2 Funds and Highgrove's misrepresentation that the Funds still own the properties in the
 3 monthly snapshots and concealment regarding the transfers show an attempt to
 4 actively conceal this information about the transfers from Plaintiffs and other
 5 members/investors in the Funds. While the properties are assets of the Funds (or were
 6 assets of the Funds prior to the transfers), the properties are being transferred and
 7 concealed by Highgrove and the Funds.

8 **Assets Are Improperly Being Commingled Between the Funds (Which**
 9 **Funds Have Different Members and Investors) and Properties Are Being**
 10 **Improperly Transferred Between the Funds for Inadequate Consideration**

11 91. Section 1.6(d) of the Funds' operating agreement states in pertinent part
 12 that "[t]he Manager and the Company shall not commingle the assets of one Series
 13 with the assets of any other Series or the assets (if any) of the Company, generally."
 14 Section 2.8 of the operating agreements also expressly prevents commingling of funds
 15 with each other or the funds of Highgrove or any affiliates, and prohibits actions
 16 prohibited by law and actions for which member consent is required. True and correct
 17 copies of the Funds' operating agreements are attached hereto as **Exhibit 4** and **8**.

18 92. On July 13, 2020, Highgrove, on behalf of RPRFII, signed an amendment
 19 to Section 2.4 of the RPRFII operating agreement for RPRFII (the amendment was
 20 not separately approved by RPRFII's members), which amendment purports to permit
 21 Highgrove to have limited rights to commingle assets by purchasing assets held by
 22 related entities while title remains in the names of related entities but with RPRFII
 23 having "full equitable interests." The amendment states that:

24
 25 ...the Company shall be authorized to purchase and/or invest in property
 26 investments in entities that are wholly owned, partially owned or
 27 controlled by members of Manager's management team ("Affiliated
 28 Entities"), and from time to time, the title to such properties may be held
 in the name of such Affiliated Entities on behalf of the Company, with
 the understanding that the Company shall have full equitable interests in

such properties.

A true and correct copy of the amendment is attached hereto as **Exhibit 4**. Highgrove and the Funds did not seek approval of this amendment from the Funds' members and the amendment is contrary to Highgrove and the Funds' fiduciary duties.

93. As set forth hereinbelow, RPRFII and OPZ (which have different members and investors) have commingled and transferred assets, RPRFII paid for certain of OPZ's costs and sold and transferred properties to OPZ for consideration that was only the original cost of the properties rather than the fair market value. Plaintiffs are informed and believe, and based thereon allege, that some if not most of those properties had been rehabbed and were being rented out, and thus were worth substantially more than their initial purchase price, and yet were sold and transferred to OPZ for the initial purchase price. This was a breach of the fiduciary duty owed to the RPRFII members/investors. In addition, as to at least some of the transfers, OPZ did not actually pay RPRFII amounts in exchange for the sale and transfer of properties and instead only received unsecured promissory notes which may be valueless. RPRFII's 2021 compilation represents that as to properties sold and transferred by RPRFII to OPZ during 2021:

The properties were sold for consideration totaling their net book value of \$1,590,371, the Company did not charge a mark-up on the cost of the properties. In addition, the Company pays for certain costs on behalf of OPZ which resulted in an amount due from OPZ totaling \$177,479 at December 31, 2021...

A true and correct copy of the RPRFII 2021 compilation is attached hereto as **Exhibit 6**.

94. In addition, RFPRII's compilation represents that additional sales and transfers were made at cost rather than fair market value took place at the beginning of 2022:

On January 1, 2022, the Company sold certain properties to OPZ for

1 consideration totaling their net book value of \$582,798. The Company did not
2 charge a mark-up on the cost of the properties. The Company financed the
3 acquisition through a loan to OPZ that is unsecured, due on demand and bears
interest at 12% per annum.

4 A true and correct copy of the RPRFII 2021 compilation is attached hereto as

5 **Exhibit 6.**

6 95. In addition to the issues with the Funds commingling and transferring
7 assets for less than fair market value or for no value, the Funds and CVI (the related
8 entity that is also controlled by Highgrove) are also not dealing with each other in
9 arms-length agreements. Aside from transfers of properties, large unsecured loans are
10 also being made. Even though RPRFII has represented that it owns 99% of CVI,
11 OPZ's compilation states that OPZ made an unsecured loan to CVI for over \$1.1
12 million during 2021:

13 During the year ended December 31, 2021, the Company provided loan
14 financing to RPRFII CVI, LLC ("CVI") totaling \$1,176,055. CVI is related to
15 the Company through common control. The loan is unsecured, bears interest at
16 12% per annum and is due on demand. At December 31, 2021, the balance
receivable from CVI totaled \$1,176,055.

17 A true and correct copy of the OPZ 2021 compilation is attached hereto as **Exhibit 5.**

18 96. Tomblin stated during a RPRFII Zoom investor call on September 27, 2022
19 that there were going to have to be transfers from CVI to a new entity, stating that
20 "because some of these are in the CVI, the special purpose entity that was set up to
21 handle the Corevest [loan], there has to be a transfer from CVI into a secondary
22 special purpose entity. The lenders want the portfolio of 95 properties in a separate
23 brand new setup special purpose entity." Tomblin stated that there were 95 properties
24 that would secure a blanket loan. Yet, that explanation does not account for why
25 RPRFII would transfer properties for less than fair market value to CVI or why OPZ
26 would loan funds to CVI. The Funds' creation of CVI and utilizing a large amount of
27 debt against the properties was contrary to the representations previously made by
28

Highgrove and RPRFII to members/investors that RPRFII would be a no-debt fund and placed the properties at risk when RPRFII was supposed to have no debt. Highgrove and the Funds later notified members/investors that the Funds were going to obtain loans and take on debt with the purpose of enhancing returns through leverage when, Plaintiffs are informed and believe, and based thereon allege, that, in reality, the Funds were obtaining loans and taking on debt because the Funds needed the amounts in order to continue to operate and pay debts as they became due.

97. RPRFII also transferred and sold a significant number of properties to OPZ between December 2020 and August 2022 through quit claim deeds and warranty deeds signed by Highgrove (by Tomblin as CEO/President of Highgrove), thereby improperly commingling assets between the two Funds, as shown in the chart below:

Address/Parcel Id.	Date
3232 N. 24 th Pl., Milwaukee, Wisconsin	12/31/20
2118 N. 18 th St., Milwaukee, Wisconsin	12/31/20
100 E. Concordia Ave., Milwaukee, Wisconsin	12/31/20
3275 N. 29 th St., Milwaukee, Wisconsin	12/31/20
3117 N. 29 th St., Milwaukee, Wisconsin	12/31/20
2909 W. Clarke St., Milwaukee, Wisconsin	12/31/20
2318 W. Finn Pl., Milwaukee, Wisconsin	12/31/20
2202-2204 N. 17 th St., Milwaukee, Wisconsin	12/31/20
3058 N. 29 th St., Milwaukee, Wisconsin	12/31/20
3209 N. 29 th St., Milwaukee, Wisconsin	12/31/20
3266 N. 28 th St., Milwaukee, Wisconsin	12/31/20
3431 N. 24 th Pl., Milwaukee, Wisconsin	12/31/20
3217 N. 33 rd St., Milwaukee, Wisconsin	12/31/20
3261 N. 24 th Pl., Milwaukee, Wisconsin	12/31/20
2427-2429 W. Nash St., Milwaukee, Wisconsin	12/31/20
2329-2331 W. Finn Pl., Milwaukee, Wisconsin	12/31/20

1	2734-2736 N. 34 th St., Milwaukee, Wisconsin	12/31/20
2	2338 W. Keefe Ave., Milwaukee, Wisconsin	12/31/20
3	5271-5273 N. 38 th St., Milwaukee, Wisconsin	12/30/21
4	3279 N. Buffum St., Milwaukee, Wisconsin	12/30/21
5	3351 N. 20 th St., Milwaukee, Wisconsin	12/30/21
6	1025 N. 24 th St., Milwaukee, Wisconsin	12/30/21
7	1727 W. Wright St., Milwaukee, Wisconsin	12/30/21
8	2437 N. 29 th St., Milwaukee, Wisconsin	12/30/21
9	2813-2815 N. 33 rd St., Milwaukee, Wisconsin	12/30/21
10	3258-3260 N. Buffum St., Milwaukee, Wisconsin	12/30/21
11	3264 N. Buffum St., Milwaukee, Wisconsin	12/30/21
12	3266-3268 N. Buffum St., Milwaukee, Wisconsin	12/30/21
13	3537 N. 23 rd St., Milwaukee, Wisconsin	12/30/21
14	3523 N. 23 rd St., Milwaukee, Wisconsin	12/30/21
15	3127 N. 34 th St., Milwaukee, Wisconsin	12/30/21
16	3272-3274 N. Buffum St., Milwaukee, Wisconsin	12/30/21
17	1021 N. 24 th St., Milwaukee, Wisconsin	12/30/21
18	1911 W. Chambers St., Milwaukee, Wisconsin	8/19/22
19	2450 W. Keefe Ave., Milwaukee, Wisconsin	8/19/22

20 True and correct copies of the quitclaim deeds and warranty deeds are attached hereto
 21 as **Exhibits 25** and **26**. Plaintiffs are informed and believe, and based thereon allege,
 22 that the transfers and sales from RPRFII to OPZ effectuated the commingling of assets
 23 to bring OPZ into regulatory compliance with restrictions relating to OPZ's status as
 24 an opportunity zone fund and were to the detriment of RPRFII and for the benefit of
 25 OPZ.

26 98. In addition to the above transfers, there are also ten properties that appear
 27 to have been transferred from RPRFII to OPZ in June 2022, with the OPZ June 2022
 28 monthly snapshot that was sent to members/investors stating that “[t]en stabilized

1 properties, totaling sixteen (16) units, were transferred to the Opportunity Zone Fund
 2 from RPRFII. These were always Opportunity Zone properties that had to be
 3 temporarily held by RPRFII.” True and correct copies of the June RPRFII and OPZ
 4 monthly snapshots are attached hereto as **Exhibits 27** and **28**. The chart in the OPZ
 5 monthly snapshot then lists OPZ as having 66 properties and 106 units in May 2022
 6 increasing to 76 properties and 122 units in June 2022. There is no explanation
 7 provided as to why RPRFII would have to temporarily hold OPZ properties or why
 8 the properties “were always Opportunity Zone properties.”

9 99. During a RPFII investor Zoom call that happened just recently, on
 10 December 21, 2022, Tomblin disclosed based on an investor question that RPRFII had
 11 recently sold and transferred a 10-unit apartment building (a building that had been
 12 rehabbed using RPRFII funds) to an entity owned by Tomblin’s family partnership
 13 entity based on what Tomblin stated was an outside evaluation and appraisal. RPRFII
 14 and Highgrove have not provided documents regarding the appraisal, evaluation or
 15 sale and transfer to members/investors. RPRFII and Highgrove also have not
 16 provided evidence that his family partnership paid any amounts to RPRFII in
 17 exchange for the sale and transfer.

18 100. Highgrove’s commingling of assets, transfers of properties between the
 19 Funds for less than fair market value or for no value and large unsecured loans are not
 20 permitted, effectuated fraudulent transfers of assets belonging to one of the Funds to
 21 the other for inadequate consideration, are improper and a breach of fiduciary duty.

22 **The Funds Operated in Manner Consistent With a Ponzi Scheme – Profits**
 23 **Were Insufficient to Pay Distributions To Investors and Distributions**
 24 **During At Least 2021 Were Funded Through New Investments**

25 101. In addition to commingling and transferring assets between the Funds,
 26 Plaintiffs are informed and believe, and based thereon allege, that the Funds’
 27 unaudited financial statements for 2021 recently sent to members and investors in or
 28 about the end of September 2022 reflect that the Funds operated in a manner

1 indicative of a Ponzi scheme at least during 2021. The Ninth Circuit has described a
2 Ponzi scheme as:

3 ... an arrangement whereby an enterprise makes payments
4 to investors from the proceeds of a later investment rather
5 than from profits of the underlying business venture, as the
6 investors expected. The fraud consists of transferring
7 proceeds received from the new investors to previous
8 investors, thereby giving other investors the impression that
9 a legitimate profit making business opportunity exists,
10 where in fact no such opportunity exists.

11 *In re Agricultural Research and Technology Group, Inc.*, 916 F.2d 528, 531 (9th Cir.
12 1990) (“Agretech”). In *Agretech*, the Ninth Circuit further stated that “[d]istributing
13 funds to earlier investors from the receipt of monies from later investors is the hallmark
14 of Ponzi schemes.” *Agretech* at 536; *see also Donell v. Kowell*, 533 F.3d 762, 767 n.2
15 (9th Cir. 2008).

16 102. Plaintiffs are informed and believe, and based thereon allege, that the
17 Funds used new investor funds to pay distributions to existing members/investors
18 during 2021 before the Funds froze distributions in or about April 2022 (based on the
19 limited information received by Plaintiffs from Highgrove and the Funds, it is uncertain
20 as to whether the Funds operated in a manner consistent with a Ponzi scheme during
21 2022 before distributions were frozen). Plaintiffs are informed and believe, and based
22 thereon allege, that the amounts paid to investors for distributions during 2021 could
23 not have come from any source other than from new investments. Between 2020 and
24 2021, vacancies in properties owned by the Funds increased to a point where the Funds’
25 business was unprofitable and the Funds purchased too many properties, even while
26 sustaining net losses, leaving the Funds cash-strapped.

27 103. Plaintiffs are informed and believe, and based thereon allege, that based
28 on the information contained in RPRFII’s compiled financial statements, the
distributions to investors totaling \$3,571,871 during 2021 could not have been made
from RPRFII without the influx of new investor money. Also, based on the

1 information available, Plaintiffs are informed and believe, and based thereon allege,
2 that distributions during 2022 totaling \$684,938 likely were funded with new investor
3 money. As for OPZ, based on the information contained in its compiled financial
4 statements, Plaintiffs are informed and believe, and based thereon allege, that the
5 distributions totaling \$625,005 to investors during 2021 could not have been made
6 without the influx of new investor money.

7 104. During a RPRFII investor Zoom call on May 4, 2022, Tomblin asked the
8 rhetorical question “where did the equity cash go recently” with the corresponding slide
9 stating “Where did the Equity Cash go?” In response to his rhetorical question, Tomblin
10 stated that \$2,992,145 went to purchase a 34-property package for RPRFII, \$76,100
11 went to purchase a property for OPZ and that the Funds paid down a line of credit by
12 \$1,250,000 in March 2022 and paid down the line of credit further by \$2,700,000 in
13 May 2022. Tomblin did not state that any of the investor funds had been used to pay
14 amounts to other investors. Yet, as set forth below, during at least 2021, Plaintiffs are
15 informed and believe, and based thereon allege, that the Funds operated in a manner
16 indicative of a Ponzi scheme and the representations made by Tomblin on behalf of
17 Highgrove and the Funds as to what the members investments were used for were false
18 or misleading and concealed that investor funds had been improperly used to pay other
19 investors.

20 **The Funds’ Distributions to Members/Investors During 2021 Were**
21 **Consistent with a Ponzi Scheme**

22 105. RPRFII and OPZ did not provide compilations to members/investors for
23 2020, telling members/investors that it was due to the pandemic. That was
24 notwithstanding Section 8.2 in the Funds’ operating agreements, which stated that
25 “[w]ith respect to each Series, the Manager shall prepare and deliver a report to each
26 Series Participant in such Series within ninety (90) days after the end of each Fiscal
27 Year and within thirty (30) days after the end of each of the first three quarters of each
28 Fiscal Year, containing the following: (i) a balance sheet setting forth the assets,

1 liabilities and Series Participants' equity of such Series as of the end of such Fiscal Year
2 or quarter (unaudited); and (ii) an income statement setting forth the net profit or net
3 loss of such Series for such Fiscal Year or quarter (unaudited). All such statements
4 shall be prepared in accordance with generally accepted accounting principles,
5 consistently applied for the periods indicated. The Manager, in its sole discretion, may
6 cause the balance sheet or income statement of any Series as of the end of, or with
7 respect to, any Fiscal Year to be audited, at the expense of the applicable Series." True
8 and correct copies of the operating agreements are attached hereto as **Exhibits 4 and 8**.

9 106. RPRFII's compilation for 2021 shows a net loss of (\$127,150).
10 Meanwhile, during 2021, RPRFII made distributions to members of \$3,571,871. Those
11 distributions could not have come from net profits during 2021 since the compilation
12 shows that RPRFII was not profitable and had a net loss for 2021. The distributions
13 also could not have come from cash and cash equivalents (other than new investments)
14 given that the compilation shows that at the beginning of the year cash and cash
15 equivalents were \$438,392 and at the end of the year were \$1,949,512. The statement
16 of cash flows reflects cash flows from investment activities of \$1,590,371 from sales of
17 investment properties (which amount was exceeded by \$1,905,773 spent in purchases
18 of new investment properties and a \$740,00 investment in an affiliate), \$461,500 in
19 proceeds from notes payable and \$6,718,186 in new investments in RPRFII. Plaintiffs
20 are informed and believe, and based thereon allege, that the distributions to members of
21 \$3,571,871 during 2021 had to have come from new investments because the
22 compilation shows that the funds could not have come from anywhere else. A true and
23 correct copy of RPRFII's 2021 compilation is attached hereto as **Exhibit 6**. Although
24 Plaintiffs have requested access to inspect and copy the Funds' books and records that
25 would provide further information as to the Funds' use of investments from members
26 and investors during 2021 and other years, the Funds have delayed or declined
27 providing access to inspect and copy the books and records. As of the filing of this
28

1 Complaint, Highgrove and the Funds have continued to decline to provide access to
2 inspect and copy the Funds' books and records.

3 107. According to the 2021 compilation for RPRFII, RPRFII owns 99% of CVI.
4 Plaintiffs are informed and believe, and based thereon allege, that if RPRFII received
5 income from CVI, income would be reflected in RPRFII's income statement. As
6 discussed above, RPRFII had net losses for 2021 and year-to-date 2022 as of August
7 31, 2022. RPRFII also had a net loss of (\$100,800) in 2020. A true and correct copy
8 of RPRFII's internal unaudited income statement as of December 31, 2020 is attached
9 hereto as **Exhibit 29**.

10 108. OPZ's compilation for 2021 shows a net loss of (\$85,178). Meanwhile,
11 during 2021, OPZ made distributions to members of \$625,005. Those distributions
12 could not have come from net profits during 2021 since OPZ was not profitable and had
13 a net loss for 2021. The distributions also could not have come from OPZ's cash and
14 cash equivalents (other than proceeds from new investments). The compilation shows
15 that at the beginning of the year cash and cash equivalents were \$452,347 and at the end
16 of the year were \$1,959,912. The statement of cash flows reflects that the only cash
17 that came in during 2021 consisted of \$145,000 in proceeds from notes payable (which
18 amount was more than exceeded by \$2,815,863 in cash used for purchases and
19 development of investment properties, \$353,896 paid in syndication costs to raise new
20 investments and \$33,138 paid on notes payable) and \$5,846,481 in new investments in
21 OPZ. Plaintiffs are informed and believe, and based thereon allege, that OPZ's
22 distributions to members of \$625,005 during 2021 had to have come from new
23 investments because the compilation shows that the funds could not have come from
24 anywhere else. A true and correct copy of OPZ's 2021 compilation is attached hereto
25 as **Exhibit 5**. Although Plaintiffs have requested access to inspect and copy the Funds'
26 books and records that would provide further information as to the Funds' use of
27 investments from members and investors during 2021 and other years, the Funds have
28 delayed or declined providing access to inspect and copy the books and records. As of

1 the filing of this Complaint, Highgrove and the Funds have continued to decline to
2 provide access to inspect and copy the Funds' books and records.

3 109. Plaintiffs are informed and believe, and based thereon allege, that new
4 investments in 2021 were made after Highgrove and the Funds reassured
5 members/investors as to the safety and return on investment of their investments.
6 Plaintiffs are informed and believe, and based thereon allege, that the new investments
7 made provided the means for the Funds to pay distributions back to themselves and to
8 other members/investors.

9 110. The Funds' net losses have continued in 2022. Highgrove and RPRFII
10 represented during the September 27, 2022 investor Zoom call that RPRFII and CVI
11 had net losses for 2022, with RPRFII having a net loss year-to-date of (\$136,221) and
12 CVI having a net loss year-to-date of (\$62,717) but that the net losses were
13 "improving." Notwithstanding the year-to-date net losses for 2022, the Funds have
14 stated in recent monthly snapshots that the Funds' distributions to members/investors
15 are set to restart in 2023. In addition, during a RPRFII investor Zoom call on December
16 21, 2022, one of the slides also stated that "[w]ith no commitment of the amount, cash
17 distributions are anticipated to restart during the first quarter, to be received at the end
18 of April." A true and correct copy of the slide is attached hereto as **Exhibit 30**. During
19 that RPRFII investor Zoom call on December 21, 2022, another slide states that the
20 draft October 2022 financial statements show a year-to-date net loss of (\$218,477) for
21 RPRFII and a year-to-date net loss of (\$54,881) for CVI. The slide shows positive net
22 income for the month of October in the amount of \$25,075 for RPRFII and \$10,161 for
23 CVI even though an earlier slide showed that RPRFII has a vacancy rate of 49.28%.
24 Another slide shows that the draft November 2022 financial statements show a year-to-
25 date net loss of (\$207,350) for RPRFII and a year-to-date net loss of (\$86,744) for CVI.
26 The slide shows positive net income for the month of November in the amount of
27 \$11,425 for RPRFII and \$31,988 for CVI. Tomblin stated that "we feel very
28 comfortable and confident of reinstating the cash distributions in the first quarter..."

111. Plaintiffs are informed and believe, and based thereon allege, that during 2021, both RPRFII and OPZ distributed funds to members/investors that came from new investments from other members/investors rather than from profits, thereby giving the impression of a legitimate profit-making business opportunity when in reality the Funds were unprofitable and cash-strapped, relying on new investments, and that the distributions during 2021 came from the funds of other investors.

Percentage Commissions Were Incurred and Paid by the Funds to Obtain New Investments, Which Is Consistent with Many Ponzi Schemes

112. Members and investors were encouraged by the Funds and Highgrove during 2021 to bring in new investors and investments into the Funds. During 2021, RPRFII paid \$322,348 in “syndication costs” and OPZ paid \$353,896 in “syndication costs” while the Funds were unprofitable and sustained net losses. As stated in Note 2(g) of the Funds’ 2021 compilations, “[s]yndication costs are those incurred by the Company to market or sell membership interests.” The Funds’ members were promised a commission of 1% on any new investments they brought into the Funds and then received statements showing commissions to be paid based on bringing in new investors and investments. The push by Highgrove and the Funds to bring in new investors and investments and to pay commissions to do so is consistent with many Ponzi schemes.

The Funds and Highgrove Have Other Significant Issues Regarding Concentration of Authority, Lack of Internal Controls, Unreliable Accounting and Inappropriate Actions That Are Wholly Inconsistent with Acting as a Fiduciary to Plaintiffs

113. The Funds have not had audits performed and have only paid for compilations, which do not provide for any assurance as to the accuracy of the financial information presented. In addition, Plaintiffs are informed and believe, and based thereon allege, that the Funds’ internal accounting is not consistent or reliable and that Highgrove (through Tomblin) maintains tight control over access to financial

1 information. Notwithstanding Highgrove's management structure including other
 2 officers, Plaintiffs are informed and believe, and based thereon allege, that Tomblin
 3 controls Highgrove and the Funds and makes all major decisions. Plaintiffs are further
 4 informed and believe, and based thereon allege, that the Funds' serious and problematic
 5 issues go beyond commingling assets between the Funds, transferring assets out of the
 6 Funds and operating as in a manner consistent with a Ponzi scheme (at a minimum
 7 during 2021), including: (1) the Funds and Highgrove lack appropriate internal controls,
 8 providing the ability of Tomblin to control all material aspects of the Funds; (2)
 9 Highgrove has authorized purchases of properties with little-to-no due diligence or
 10 inspections because they "cost too much"; (3) Highgrove had a focus to bring in more
 11 money in investments before the end of 2021 rather than concentrating on operations or
 12 profitability; (4) the Funds paid labor costs and used the Funds' resources to rehab and
 13 perform work on properties owned directly or indirectly by Tomblin's son-in-law, Vice
 14 President of Operations and Research Development, Albert (Trey) Barton, III; (5)
 15 Highgrove and the Funds circulated financial status summaries for the Funds that
 16 showed profits when the Funds were actually losing money; and (6) OPZ was out of
 17 compliance with federal law as an opportunity zone fund and then commingled assets
 18 by having RPRFII transfer properties to OPZ in order to achieve compliance.

19 **Highgrove and the Funds Made Material Misrepresentations and Material**
 20 **Omissions to Plaintiffs**

21 114. In regard to due diligence on properties to be purchased, the Highgrove
 22 Progress Report for Funds for the period January 31, 2019 through June 15, 2020
 23 provided to members/investors states that "[a]n initial review of each property takes
 24 place, to determine whether it meets the criteria for moving on to escrow. The criteria
 25 include but are not limited to: a. Property value b. Anticipated rental returns, once
 26 stabilized c. An initial estimate of rehabilitation costs." A true and correct copy of the
 27 Highgrove Progress Report for Funds for the period January 31, 2019 through June 15,
 28 2020 is attached hereto as **Exhibit 31** (the quoted language is at p. 5). The progress

1 report further made assertions such as “[d]espite a reeling economy and the toughest
2 tests for its leadership team, Highgrove is not just surviving—it is in fact thriving”,
3 “[f]rom the start, this business has had no leverage. While it does have a small line of
4 credit, Highgrove has no debt. We deal in cash only property purchases. The return on
5 capital percentages we have distributed quarterly to our Investor Members has remained
6 at 16.78% over the past 4 years.” The progress report further includes a projection for
7 total stabilized gross monthly rental income of \$161,480, total stabilized gross annual
8 rental income of \$1,936,560 and total stabilized projected annual net operating income
9 based on stabilized rental income projections of \$968,880.

10 115. Notwithstanding the representations made in Highgrove’s progress report,
11 RPRFII’s internal unaudited financial statements for 2020 reflect that RPRFII was not
12 “thriving” and instead had operating expenses that exceeded its income and had a net
13 loss. RPRFII’s internal unaudited financial statements reflect that RPRFII had income
14 of \$887,284, expenses of \$988,084 and a net loss of (\$100,800). The internal unaudited
15 financial statement also shows that for the month of December 2020, RPRFII had
16 income of \$103,225, expenses of \$112,224 and a net loss for December 2020 of
17 (\$8,998). While Highgrove reported in its progress report during 2020 that the
18 projection for gross monthly rental income was \$161,480, the reality was that it was far
19 less and the net income on a monthly basis was negative. Further, while Highgrove
20 reported in its progress report that the projection for total stabilized annual net operating
21 income was \$968,800, in reality there was no net income and instead was a net loss of
22 (\$100,800). The Funds did not provide compilations, reviews or audits to Plaintiffs and
23 other members/investors, stating that the lack of financial statements was based on the
24 pandemic. Highgrove and the Funds did not provide internal unaudited financial
25 statements until 2022 and only provided them, without any back-up documents, after
26 demands of members/investors, and while Highgrove and the Funds continued to
27 request other documents.
28

1 116. During a RPRFII investor Zoom call on November 16, 2021, Highgrove
2 reported that RPRFII had closed on 69 properties with 79 units, mostly single family
3 residential properties, for \$3.8 million, that there was only a 20% vacancy rate and with
4 the properties in overall good condition, with less than average rehab necessary.
5 Plaintiffs are informed and believe, and based thereon allege, that subsequent
6 disclosures by RPRFII and Highgrove show that the units had much higher than a 20%
7 vacancy rate and that the properties required extensive rehab. Tomblin later stated that
8 Highgrove or the Funds were suing the seller for misrepresentations, but RPRFII and
9 Highgrove failed to conduct the appropriate due diligence for the purchase and then
10 made false or misleading statements to Plaintiffs and other members/investors.

11 117. Plaintiffs are informed and believe, and based thereon allege, that in
12 order to obtain investments for membership interests from Plaintiffs and in order to
13 prevent or delay Plaintiffs and other members/investors from taking actions against
14 Highgrove and the Funds, Highgrove and the Funds made misrepresentations and
15 omissions including but not limited to the following:

- 16 a. That Plaintiffs' investments are "safe," that "the fund is safe," that
17 "the fund is not in trouble," that "your investment is well
18 capitalized and secure" and that "[w]e're not going to be losing
19 anybody's dollars or anything like that. Your investment is well
20 capitalized and well secured" while, in reality, the assets of the
21 Funds were being commingled, assets of the Funds were
22 transferred between each other, to CVI and to new entities, and
23 investor funds were also being paid to other investors in a manner
24 indicative of a Ponzi scheme;
- 25 b. That investor funds were solely used to buy properties and pay
26 down a line of credit without mention of the investor funds being
27 used to pay other investors;
- 28

- c. That the refusal to provide access to Plaintiffs to inspect and copy the Funds' books and records was because of implementation of a new accounting system or vacation or holiday schedules or that access would jeopardize the well-being of the Fund;
- d. That the information in the monthly snapshots provided by Highgrove was accurate;
- e. That properties were to be purchased and rehabbed with all cash and no debt;
- f. That there was no concern regarding losing the properties even if the properties were vacant given that the properties and rehab of the properties was to be done with all cash and no debt;
- g. That properties would be rehabbed quickly and cheaply;
- h. That vacancy rates were low;
- i. That the Funds and Highgrove were well-managed with a long and successful track record and officers and personnel who were well-qualified for their positions; and
- j. That there was a high degree of confidence of an internal rate of return of 20% or higher, allowing the Funds to make substantial quarterly dividends or payments while the properties continued to appreciate in value.

The Urgent Need for Appointment of a Receiver and for a Temporary Restraining Order and Preliminary Injunction in Aid of the Receiver

118. If a receiver is not appointed, Highgrove will continue managing the Funds and the Funds' assets will be at risk of being further commingled, dissipated, and subject to further transfers or encumbrances that are not in the Funds' best interests. In addition, given that the Funds have provided notice in recent monthly snapshots that distributions to members/investors will restart in 2023, if a receiver is not promptly appointed, the Funds may also continue to operate in a manner consistent with a Ponzi scheme during

1 2023 and beyond. Any legal remedy other than the requested relief of appointment of
 2 a receiver in order to marshal and protect the Funds' assets and a temporary restraining
 3 order and preliminary injunction to aid the receiver would be inadequate because it
 4 would place the assets of the Funds at significant risk for further misuse and dissipation.

5 119. Section 13.2(c) in the Funds' operating agreements purport to waive and
 6 do away with the right to seek appointment of a receiver, providing that members
 7 "specifically renounce, waive and forfeit all rights whether arising under contract or
 8 statute or by operation of law, to . . . seek or maintain any action for the appointment of
 9 a receiver for the Company, any Series or any asset of any Series." The operating
 10 agreements go even beyond that by purporting in Section 11.2 to do away with and
 11 waive the right to remove the manager (Highgrove), stating that "[t]he Manager may
 12 not be removed by the Members or otherwise as the Manager of the Company or any
 13 Series." The operating agreements also purport in Section 1.11 of the operating
 14 agreements to eliminate any fiduciary duty by Highgrove to the Funds to the extent
 15 permitted by Section 18-1101 including fiduciary duties, implied duties, duties of
 16 loyalty, care, and good faith and fair dealing. The Funds' operating agreement
 17 provisions that purport to eliminate any ability of Plaintiffs and other
 18 members/investors to prevent the improper commingling of assets, fraudulent transfer
 19 of assets, operating in a manner consistent with a Ponzi scheme and to prevent
 20 Highgrove, as manager of the Funds, from acting without any semblance of fiduciary
 21 duties, are unconscionable, unenforceable and void as against public policy.

22 120. In addition to the Court's authority based on applicable statutes, the
 23 Court's Local Rules and case law, Section 13.5(b) of the Funds' operating agreements
 24 also provide the Court with authority to "limit any term or provision as to make it
 25 enforceable or valid within the requirements of applicable law, and, in the event such
 26 term or provision cannot be so limited, this Agreement or such Series Agreement shall
 27 be construed to omit such invalid or unenforceable provisions." Fed. R. Civ. P. 66 and
 28 Central District of California Local Rule ("LR") 66-1 exist so that the Court has the

1 power to appoint a receiver for good cause shown. LR 66-1 states that “[u]pon good
 2 cause shown by verified pleadings or declaration, the Court may in its discretion appoint
 3 a temporary receiver without notice to creditors.” Case law has held that “[u]nder Rule
 4 66 of the Federal Rules of Civil Procedure, federal courts are authorized to appoint
 5 receivers to take and preserve property at issue in the underlying action.” *See, e.g.,*
 6 *McCool v. Wilson*, 2020 WL 5044193, at *3 (C.D. Cal. 2020). The Funds’ operating
 7 agreement provisions cannot limit the Court’s authority to appoint a receiver over the
 8 Funds for good cause shown. Plaintiffs will separately file a motion for the appointment
 9 of a receiver and for a temporary restraining order and preliminary injunction in aid of
 10 the receiver, which motion will be supported by declarations.

11 121. The Funds’ operating agreement provisions purporting to waive the ability
 12 of this Court to appoint a receiver for good cause shown are unconscionable, attempt to
 13 perpetrate an ongoing fraud on Plaintiffs, are void as against public policy and would
 14 permit continued commingling, transfers of assets of the Funds, operating in a manner
 15 consistent with a Ponzi scheme, and other improper acts.

16 **The Operating Agreement Provisions Purporting to Require Binding**
 17 **Arbitration of the Relief Sought of a Receiver and a Temporary**
 18 **Restraining Order and Preliminary Injunction Are Also Void**

19 122. The Funds’ operating agreements and subscription agreements also
 20 purport to require binding arbitration of issues related to the Funds, the operating
 21 agreements and the subscription agreements. However, pursuant to Fed. R. Civ. P. 66
 22 and LR 66-1, only the Court and not a private arbitrator has the authority to appoint a
 23 receiver and to enter a temporary restraining order and preliminary injunction for good
 24 cause shown. Given the nature of the acts and omissions of Highgrove and the Funds,
 25 there is no effective alternate relief and the preliminary relief sought cannot be granted
 26 by an arbitrator. The provisions are unconscionable, would result in the denial of basic
 27 rights and remedies, including the appointment of a receiver, and are void as against
 28 public policy.

FIRST CLAIM FOR RELIEF

(Fraud—Intentional Misrepresentation

Against Defendants Highgrove and the Funds)

123. Plaintiffs re-assert the allegations set forth in the general allegations above, as though set forth in full herein.

124. Highgrove and the Funds made material misrepresentations to Plaintiffs in order to induce them to invest in the Funds and then to delay Plaintiffs from taking actions to protect their rights as to their investments in the Funds. Among other things, Highgrove and the Funds made the following misrepresentations:

- a. That Plaintiffs' investments are "safe," that "the fund is safe," that "the fund is not in trouble," that "your investment is well capitalized and secure" and that "[w]e're not going to be losing anybody's dollars or anything like that. Your investment is well capitalized and well secured" while, in reality, the assets of the Funds were being commingled, assets of the Funds were transferred between each other, to CVI and to new entities, and investor funds were also being paid to other investors in a manner indicative of a Ponzi scheme;
- b. That investor funds were solely used to buy properties and pay down a line of credit without mention of the investor funds being used to pay other investors;
- c. That the refusal to provide access to Plaintiffs to inspect and copy the Funds' books and records was because of implementation of a new accounting system or vacation or holiday schedules or that access would jeopardize the well-being of the Fund;
- d. That the information in the monthly snapshots provided by Highgrove was accurate;

- e. That properties were to be purchased and rehabbed with all cash and no debt;
- f. That there was no concern regarding losing the properties even if the properties were vacant given that the properties and rehab of the properties was to be done with all cash and no debt;
- g. That properties would be rehabbed quickly and cheaply;
- h. That vacancy rates were low;
- i. That the Funds and Highgrove were well-managed with a long and successful track record and officers and personnel who were well-qualified for their positions; and
- j. That there was a high degree of confidence of an internal rate of return of 20% or higher, allowing the Funds to make substantial quarterly dividends or payments while the properties continued to appreciate in value.

125. At the time of the misrepresentations to Plaintiffs, Highgrove and the Funds had knowledge of the falsity of the misrepresentations.

126. In making the misrepresentations, Highgrove and the Funds had intent to induce reliance and to deceive the Plaintiffs.

127. Plaintiffs actually and justifiably relied on the misrepresentations of Highgrove and the Funds.

128. As a result of the acts of Highgrove and the Funds, Plaintiffs have been damaged in an amount not less than \$8 million, but in an amount to be proven at trial.

129. Additionally, in engaging in the acts alleged herein, Defendants acted intentionally, willfully, wantonly and with reckless disregard of Plaintiffs' rights and with actual malice, oppression, and fraud. As such, Defendants are subject to punitive damages based on their wrongful actions toward Plaintiffs.

SECOND CLAIM FOR RELIEF

(Fraud—Concealment)

Against Defendants Highgrove and the Funds)

130. Plaintiffs re-assert the allegations set forth in the general allegations above, as though set forth in full herein.

131. Highgrove and the Funds concealed, suppressed, and omitted material facts to Plaintiffs. Among other things, Highgrove and the Funds concealed material facts in order to induce Plaintiffs to invest in the Funds and then to delay Plaintiffs from taking actions to protect their rights as to their investments in the Funds, including, but not limited to:

- a. That Plaintiffs' investments are "safe," that "the fund is safe," that "the fund is not in trouble," that "your investment is well capitalized and secure" and that "[w]e're not going to be losing anybody's dollars or anything like that. Your investment is well capitalized and well secured" while, in reality, the assets of the Funds were being commingled, assets of the Funds were transferred between each other, to CVI and to new entities, and investor funds were also being paid to other investors in a manner indicative of a Ponzi scheme;
- b. That investor funds were solely used to buy properties and pay down a line of credit without mention of the investor funds being used to pay other investors;
- c. That the refusal to provide access to Plaintiffs to inspect and copy the Funds' books and records was because of implementation of a new accounting system or vacation or holiday schedules or that access would jeopardize the well-being of the Funds when the refusal was to delay or prevent access;
- d. That the information in the monthly snapshots provided by Highgrove was accurate when the information was inaccurate, and,

1 among other things, did not reflect that properties had been
2 transferred out of the Funds to newly formed entities;

- 3 e. That properties were to be purchased and rehabbed with all cash
4 and no debt when debt was used;
- 5 f. That properties would be rehabbed quickly and cheaply when, in
6 reality, the rehab projects had a backlog, were expensive and the
7 Funds did not have sufficient liquid funds to rehab the properties;
- 8 g. That vacancy rates were low when the vacancy rates kept on
9 increasing dramatically and the Funds continued to purchase more
10 properties notwithstanding high vacancy rates;
- 11 h. That the Funds and Highgrove were well-managed with a long and
12 successful track record and officers and personnel who were well-
13 qualified for their positions when the management of Highgrove
14 and the Funds lacked appropriate internal controls and commingled
15 and improperly transferred assets; and
- 16 i. That there was a high degree of confidence of an internal rate of
17 return of 20% or higher, allowing the Funds to make substantial
18 quarterly dividends or payments while the properties continued to
19 appreciate in value.

20 132. Highgrove and the Funds had a duty to disclose the material facts to
21 Plaintiffs.

22 133. Highgrove and the Funds intentionally concealed the material facts from
23 Plaintiffs with the intent to defraud and deceive Plaintiffs.

24 134. Plaintiffs were unaware of the material facts and would not have acted as
25 they did if they had known about the concealed facts.

26 135. As a result of the concealment of material facts and the acts of Highgrove
27 and the Funds, Plaintiffs have been damaged in an amount not less than \$8 million,
28 but in an amount to be proven at trial.

136. Additionally, in engaging in the acts alleged herein, Defendants acted intentionally, willfully, wantonly and with reckless disregard of Plaintiffs' rights and with actual malice, oppression, and fraud. As such, Defendants are subject to punitive damages based on their wrongful actions toward Plaintiffs.

THIRD CLAIM FOR RELIEF

(Negligent Misrepresentation

Against Defendants Highgrove and the Funds)

137. Plaintiffs re-assert the allegations set forth in the general allegations above, as though set forth in full herein.

138. Highgrove and the Funds made material misrepresentations and omitted material facts to Plaintiffs. Among other things, Highgrove and the Funds made the following misrepresentations:

- a. That Plaintiffs' investments are "safe," that "the fund is safe," that "the fund is not in trouble," that "your investment is well capitalized and secure" and that "[w]e're not going to be losing anybody's dollars or anything like that. Your investment is well capitalized and well secured" while, in reality, the assets of the Funds were being commingled, assets of the Funds were transferred between each other, to CVI and to new entities, and investor funds were also being paid to other investors in a manner indicative of a Ponzi scheme;
- b. That investor funds were solely used to buy properties and pay down a line of credit without mention of the investor funds being used to pay other investors;
- c. That the refusal to provide access to Plaintiffs to inspect and copy the Funds' books and records was because of implementation of a new accounting system or vacation or holiday schedules or that access would jeopardize the well-being of the Funds;

- d. That the information in the monthly snapshots provided by Highgrove was accurate;
- e. That properties were to be purchased and rehabbed with all cash and no debt;
- f. That there was no concern regarding losing the properties even if the properties were vacant given that the properties and rehab of the properties was to be done with all cash and no debt;
- g. That properties would be rehabbed quickly and cheaply;
- h. That vacancy rates were low;
- i. That the Funds and Highgrove were well-managed with a long and successful track record and officers and personnel who were well-qualified for their positions; and
- j. That there was a high degree of confidence of an internal rate of return of 20% or higher, allowing the Funds to make substantial quarterly dividends or payments while the properties continued to appreciate in value.

139. At the time of the misrepresentations and concealment/omissions, Highgrove and the Funds had no reason to believe that the misrepresentations and omissions were true.

140. In making the misrepresentations and omissions, Highgrove and the Funds had intent to induce reliance by the Plaintiffs.

141. Plaintiffs actually and justifiably relied on the misrepresentations and omissions of Highgrove and the Funds.

142. As a result of the acts of Highgrove and the Funds, Plaintiffs have been damaged in an amount not less than \$8 million, but in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Defendants Highgrove and the Funds)

1 143. Plaintiffs re-assert the allegations set forth in the general allegations
2 above, as though set forth in full herein.

3 144. Plaintiffs entered into subscription agreements with Highgrove and the
4 Funds in regard to Plaintiffs' investments in the Funds in order to obtain membership
5 interests. The Funds were to be managed and operated in a manner consistent
6 applicable law and with the Funds' operating agreements.

7 145. Plaintiffs have done all or substantially all of the things that they were
8 required to do by making investments in the Funds in exchange for membership
9 interests.

10 146. The conditions required for Highgrove and the Funds' performance have
11 occurred.

12 147. Highgrove and the Funds have unfairly interfered with the Plaintiffs'
13 rights to receive the benefit under the contracts by, among other things:

- 14 a. Commingling assets between the Funds;
 - 15 b. Transferring properties between the Funds;
 - 16 c. Transferring properties out of the Funds to newly formed entities
17 for less than fair market value or for no consideration;
 - 18 d. Using the investment funds of Plaintiffs and other
19 members/investors to pay distributions to other members/investors
20 in a manner consistent with a Ponzi scheme;
 - 21 e. Making material misrepresentations and concealing material facts
22 from Plaintiffs;
 - 23 f. Failing to maintain appropriate internal controls and safeguards
24 and accurate accounting;
 - 25 g. Using assets of the Funds for the benefit of Highgrove and its
26 principals; and
 - 27 h. Engaging in gross mismanagement of the Funds.
- 28

1 152. As a result of the acts of Highgrove and the Funds in breaching their
2 fiduciary duties, Plaintiffs have been damaged in an amount not less than \$8 million,
3 but in an amount to be proven at trial.

4 153. Plaintiffs are excused from making demand on Highgrove and the Funds
5 to file a suit against themselves for the derivative claim of breach of fiduciary duty
6 because making such a demand for Highgrove and the Funds to sue themselves would
7 be futile.

8 154. Additionally, in engaging in the acts alleged herein, Defendants acted
9 intentionally, willfully, wantonly and with reckless disregard of Plaintiffs' rights and
10 with actual malice, oppression, and fraud. As such, Defendants are subject to punitive
11 damages based on their wrongful actions toward Plaintiffs.

12 **SIXTH CLAIM FOR RELIEF**

13 **(Rescission Against Highgrove and the Funds)**

14 155. Plaintiffs re-assert the allegations set forth in the general allegations
15 above, as though set forth in full herein.

16 156. Highgrove and the Funds obtained the signed subscription agreements
17 from Plaintiffs to purchase membership interests in the Funds, and the amounts to
18 purchase the membership interests, through fraud. In addition, the subscription
19 agreements are unlawful for causes which do not appear in their terms and conditions
20 and because the public interest will be prejudiced by permitting the subscription
21 agreements to stand. Among other things, Plaintiffs are informed and believe, and
22 based thereon allege, that the Funds operated in a manner consistent with a Ponzi
23 scheme at least during 2021, commingled assets between the Funds, transferred assets
24 out of the Funds, lacked appropriate internal controls and acted in a manner to benefit
25 Highgrove and its principals rather than acting as a fiduciary for Plaintiffs and the
26 other members/investors in the Funds.

27 157. This Complaint provides notice of rescission promptly upon the Plaintiffs
28 discovering the facts underlying the fraud of Highgrove and the Funds.

1 158. Upon rescission, Plaintiffs demand that Highgrove and the Funds restore
2 to Plaintiffs everything of value which they have received from Plaintiffs.

3 **SEVENTH CLAIM FOR RELIEF**

4 **(Declaratory Relief—Against All Defendants)**

5 159. Plaintiffs re-assert the allegations set forth in the general allegations
6 above, as though set forth in full herein.

7 160. An actual controversy exists between the Plaintiffs, on the one hand, and
8 Defendants, on the other hand, as to Plaintiffs’ right to inspect and copy the Funds
9 books and records based on the repeated written requests of Plaintiffs.

10 161. As a result of the dispute between the Parties as heretofore set forth, an
11 actual and judicable controversy exists between the Plaintiffs and Defendants and
12 accordingly, a judicial determination is necessary and appropriate at this time in order
13 that the respective rights and obligations of the Parties regarding Plaintiffs’ right to
14 access and copy the Funds’ books and records may be ascertained.

15 **EIGHTH CLAIM FOR RELIEF**

16 **(Preliminary Relief Including Appointment of a Receiver, a Temporary** 17 **Restraining Order, and a Preliminary Injunction** 18 **Against All Defendants)**

19 162. Plaintiffs re-assert the allegations set forth in the general allegations
20 above, as though set forth in full herein.

21 163. Good cause exists for preliminary relief including the appointment of a
22 receiver over the Funds and related entity CVI pursuant to Fed. R. Civ. P. 66 and LR
23 66-1 and for a temporary restraining order and preliminary injunction in aid of the
24 receiver based on the following actions by Highgrove as manager of the Funds:

- 25 a. Refusal to permit Plaintiffs access to inspect and copy the Funds’
26 books and records after written requests notwithstanding the
27 requirements under applicable laws and the Funds’ operating
28 agreements;

- b. Commingling assets between the Funds;
- c. Transferring properties between the Funds;
- d. Transferring properties out of the Funds to newly formed entities for less than fair market value or for no consideration;
- e. Using the investment funds of Plaintiffs and other members/investors to pay distributions to other members/investors in a manner consistent with a Ponzi scheme;
- f. Making material misrepresentations and concealing material facts from Plaintiffs;
- g. Failing to maintain appropriate internal controls and safeguards and accurate accounting;
- h. Using assets of the Funds for the benefit of Highgrove and its principals; and
- i. Engaging in gross mismanagement of the Funds.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

As To the First Claim for Relief

1. Damages as permitted by law and in an amount to be proven at trial;
2. Punitive damages, according to proof;

As To the Second Claim for Relief

3. Damages as permitted by law and in an amount to be proven at trial;
4. Punitive damages, according to proof;

As To the Third Claim for Relief

5. Damages as permitted by law and in an amount to be proven at trial;

As To the Fourth Claim for Relief

6. Damages as permitted by law and in an amount to be proven at trial;

As To the Fifth Claim for Relief

7. Damages as permitted by law and in an amount to be proven at trial;

1 8. Punitive damages, according to proof;

2 As To the Sixth Claim for Relief

3 9. For rescission of Plaintiffs' subscription agreements with the Funds and a
4 return of all amounts invested in the Funds;

5 As To the Seventh Claim for Relief

6 10. For declaratory relief that Highgrove and the Funds must permit
7 Plaintiffs to inspect and copy the Funds' books and records;

8 As To the Eighth Claim for Relief

9 11. For the appointment of a receiver and a temporary restraining order and
10 preliminary injunction in aid of the receiver;

11 As To All Claims for Relief

12 12. The costs of suit incurred;

13 13. An award of interest at the maximum legal rate;

14 14. For the appointment of a receiver;

15 15. For a temporary restraining order and preliminary injunction in aid of the
16 receiver; and

17 16. Such other and further relief as this Court deems just and appropriate
18 under the circumstances.

19 Dated: January 13, 2023

BG LAW LLP

21
22 By 

COREY R. WEBER

RYAN F. COY

Attorneys for Plaintiffs, Randy Firestone,
Dmitry Radbel, Charles Evans IV, *et al.*